

DECISION MAKING REPORT

Report for: Standards Committee

Item number: 7

Title: Proposed changes to the Council's Contract Standing Orders

Report authorised by : Assistant Director of Commercial and Operations

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Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non Key

1. Describe the issue under consideration

- 1.1. The Council Constitution governs the organisation of council decision making. It is kept under review and when necessary amendments are proposed to Standards Committee for consideration and recommendation on to full council.
- 1.2. This report proposes changes to the constitution by amending the Contract Standing Orders, Part Four of the Constitution, Section J of Contract Procedure Rules.
- 1.3. The changes recommended in this report are to support the new Procurement Target Operating Model, which transitions Procurement into a strategic and more commercially focused department, with support for low level procurement activity being undertaken by the Shared Service Centre.
- 1.4. These changes will enable Procurement to deliver £2.8m of MTFS targets over the next 3 years and help to drive further savings in any future MTFS.
- 1.5. The changes to Procurement thresholds align Haringey to those of other London Authorities.
- 1.6. Additional changes are required to support the introduction of new regulations, technologies, inconsistencies in the current CSO's and minor drafting amendments.
- 1.7. Amendments to consider consortia arrangements with other bodies (i.e. shared services with other boroughs).

- 1.8. For ease of reference the recommendations are divided into the following four areas, setting out amendments:
- to support the procurement Target Operating Model;
 - to enable the introduction of new procurement related technology platforms;
 - to enable to the use of a Dynamic Purchasing System (DPS);
 - to support the introduction of new or updated regulations; and
 - to address inconsistencies relating to thresholds and key decisions.
- 1.9. The following Councillors have been consulted and support the proposals stated in this report
- Cllr Demirci – Member for Corporate Resources
 - Cllr Arthur – Member for Finance and Health
 - Cllr Kober – Leader of the Council
- Cllr Engert – Leader of the Opposition has also received a copy of this report in draft.

2. Cabinet Member Introduction

N/A

3. Recommendations

- 3.1. That Standards Committee recommends that council make the following amendments to Contract Standing Orders, Part Four of the Constitution, Section J Contract Procedure Rules:
- 3.2. **Amendments to support the new Procurement Target Operating Model:**
- 3.2.1. Increase the threshold of delegated powers for Directors to act in the most expedient and efficient manner from £5,000 to £10,000 (CSO 8.02);
 - 3.2.2. Increase the values for the procurement process requesting at least 3 competitive quotes from between £5,000 and £100,000 to between £10,000 and £160,000 (CSO 8.03);
 - 3.2.3. Increase the threshold of goods and services contracts requiring advertisement (tender) with an estimated value of £100,000 to a new threshold of £160,000 (CSO 9.01.1);
 - 3.2.4. Increase the threshold of Works contracts requiring advertisement (tender) with an estimated value of £25,000 to a new threshold of £500,000 (CSO 9.01);
 - 3.2.5. Introduce a threshold of £500,000 or more for contracts subject to the Light Touch Regime (social care related) requiring advertisement (tender) (CSO 9.01);
 - 3.2.6. Increase the threshold for the commencement of works, goods or services under a Letter of Intent from £50,000 to £100,000 or 10% of the total contract value, whichever is the higher (CSO 9.07.3); and

3.2.7. Require approval from the Chief Operating Officer before entering into any joint procurement activity with other contracting authorities (CSO 7.04).

3.3. Amendments relating to the introduction of new Procurement related technology platforms:

3.3.1. Mandate the use of Corporate Procurement related systems to include corporate sourcing and contract management systems (defined in CSO 2.02 c);

3.3.2. Mandate contracts are stored in the Councils Contract Repository (CSO 3.02 h);

3.3.3. The threshold requiring all contracts valued at £5,000 or more to be entered onto the corporate contracts register, is increased to a new threshold of £10,000 or more and is now required to be recorded in the Corporate Contracts repository (CSO 3.02 m); and

3.3.4. Amendments to include provision for sealing, award and signing of contracts by electronic means as provided within the Corporate Procurement Systems (CSO 9.02.4 and 9.08.9).

3.4. Amendments relating to the use of a Dynamic Procurement System:

3.4.1. Incorporate amendments to facilitate the use of a Dynamic Purchasing System (CSO 9.04).

3.5. Amendments to support the introduction of new or updated regulations:

3.5.1. Incorporate amendments to support statutory changes to the Public Contracts Regulations 2015 (as amended) (the “Regulations”) (multiple references throughout the document have been added); and

3.5.2. Incorporate amendments to support introduction of the Concession Contracts Regulations 2016 (the “Regulations”) (multiple references throughout the document have been added).

3.6. Amendments to address inconsistencies relating to thresholds and Key Decisions

3.6.1. Increase the threshold for waivers requiring Cabinet approval above £250,000 to a revised threshold of £500,000 or more (CSO 10.01.1 a); and

3.6.2. Increase the threshold for waivers requiring Director approval below £250,000 to below a revised threshold of below £500,000 (CSO 10.01.1 b).

3.7. Additional minor drafting amendments to the Contract Standing Orders as required to support the above changes.

3.8. Extension to the current Consortia drafting (CSO 7.04 d) to make provision for on-going shared services arrangements, whereby procurements may be undertaken by one of the other members of the Consortia on behalf of the Council.

4. Reasons for Decisions

4.1. Procurement Operating Model

4.1.1. These proposed changes support the introduction of a new strategic and commercially focused Procurement Target Operating Model (TOM). The TOM will be comprised of

Strategic Procurement Partners (SPP) who will have oversight and responsibility for all expenditure within their relevant categories, regardless of value and whether the business units, or Procurement are procuring works, goods or services. They will be supported by a team of Procurement Delivery Managers (PDM) who will be responsible for leading on all procurements over £160,000. This will enable Procurement to deliver on its MTFS targets and concentrate on high value/risk procurements.

- 4.1.2. The existing thresholds are not aligned to other Local Authorities within London. Haringey currently has one of the lowest threshold requiring goods and services contracts to be tendered (£100,000). More than two thirds of all other Authorities in London have a threshold aligned to the statutory threshold of £164,000. Regarding works contracts, in this case Haringey currently has the lowest threshold in London requiring works contracts to be tendered (£25,000). More than half of all other Authorities in London have a threshold aligned to the statutory threshold of c£4.2m.
- 4.1.3. There are a number of increases in thresholds being recommended, this will represents around 10% - 20% reduction of non Works related procurements currently having to be advertised (tendered), enabling officers in business units to procure services in a more efficient, timely and effective manner without the need to fully comply with the requirements of an advertised (tender) opportunity.
- 4.1.4. It is anticipated the Request for Quotes (RfQ) process (procurements below £160,000) undertaken by the business units will increase by 170 in number per year; however this additional work is offset by the substantial reduction in effort required to undertake a full tender processes, as mentioned in 4.1.3 above.
- 4.1.5. Should the procurement thresholds remain as currently stated, Procurement would require an additional two Procurement Delivery Managers to manage the additional workload.
- 4.1.6. Officers will be required to submit a robust business case and obtain appropriate approval of any Haringey led joint procurement activity with other contracting authorities. Currently there is no formal requirement for officers to advise the executive officers of such an initiative. This amendment is to ensure at an executive level there is sufficient understanding of the commitments and exposure for the Council relating to any such arrangements.
- 4.1.7. There is no statutory requirement to advertise (tender) opportunities below the thresholds recommended in this report.
- 4.1.8. Increasing the threshold for delegated powers to Directors from £5,000 to £10,000 reflects an increase in the costs of goods and services procured since the last revision of the CSO thresholds. This will enable these low value procurements (generally aimed at the local SME market) to be undertaken in a more expedient manner.

- 4.1.9. Increasing the current thresholds to £160,000 for the procurement of goods and services whereby the opportunity must be advertised (tendered) aligns closely to that of the current EU threshold (£164,000);
- 4.1.10. Increasing the current threshold to £500,000 for the procurement of Works contracts, whereby the opportunity must be advertised (tendered) is aligned with a key decision. This remains significantly lower than the statutory threshold of c£4.2m. The current Council threshold of £25,000 is disproportionate to the statutory threshold (£4.2m) and does not align to the principles of the Regulations, whereby the intention is to avoid unnecessarily placing demands on suppliers to engage in overly complex procurement processes. Strategic Procurement will still lead on procurement of Works contracts in excess of £160,000 without the requirement to unnecessarily undertake a full tender exercise;
- 4.1.11. Introduction of a threshold of £500,000 or more for those procurements falling under the Light Touch Regime to be advertised (tendered), which aligns with the key decision threshold. The Light Touch Regime came into effect in February 2015, requiring some social care related services to be advertised (tendered) above £589,000. Adopting the £500,000 threshold enables these types of procurements to be undertaken in a more cost effective and efficient manner. Strategic Procurement will lead on these procurements above £160,000.
- 4.1.12. The benefits of amending the thresholds as stated in this report are:
- Undertaking a full tender process can be a costly and time consuming exercise. Increasing these limits enables officers to undertake a more expedient cost effective procurement route whilst continuing to remain within the procurement regulations;
 - The additional cost of facilitating full tenders at lower thresholds is indirectly passed onto the Council and contributes to higher cost of services;
 - Introducing these revised thresholds will encourage more local SME's to register as suppliers and respond to request for quotes. Currently some SME's are put off by the level of input required to tender for opportunities that have a relatively low value;
 - Increasing limits support the principles of the Regulations in relation to unnecessarily requiring suppliers to submit extensive documentation for opportunities and communicate electronically with tenderers;
 - Increasing the Letter of Intent threshold will facilitate scenarios whereby it has not been possible to mobilise a number project/works in a timely manner, thus resulting in costly delays and additional bureaucracy.
- 4.1.13. It is not envisaged there are significant risks related to increasing the thresholds. Commissioners are currently required to undertake low value procurements. Increasing
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the threshold has no impact on the policies they still need to comply with. The SSC will undertake quality checks to mitigate risks associated with low level procurements. All procurements in excess of £160,000 will be undertaken by Procurement and therefore the current risk profile does not change.

4.2. Procurement Related Technology

4.2.1. The new Procurement TOM includes provision of new technology enablers, mandating the use of the Corporate Procurement related systems. This will significantly simplify processes, increase efficiency, compliance, contract and performance monitoring and support MTFS targets. Processes will be introduced whereby all of these procurements will go through a quality assurance check prior to being published to the market. These checks will include (but not limited to):

- Is there any existing corporate contracts that should be utilised for the services;
- Is the correct route to market being used;
- Are the documents compliant;
- Has the necessary approval been obtained; and
- Does the requirement support the strategic management of the category.

4.2.2. This will reduce non compliant procurement related risks, non compliant expenditure and increase management of the procurement categories. All of which will contribute to the MTFS targets.

4.2.3. The Council currently has a contracts register in the form of a spreadsheet that is published every quarter. Officers are required to update the contract register each quarter ahead of publication. There is evidence this is not being maintained appropriately. The Council has a statutory requirement to publish the qualifying contracts it lets. Mandating the use of the new corporate contract repository: enables:

- enables the Council to fully understand its contractual liabilities;
- maintains a central data base for all contracts;
- enables contract and performance management of the contracts; and
- enables the Council to meet its statutory publication requirements relating to its contracts.

4.2.4. Corporate Procurement will be able to monitor the performance monitoring of the Council's key contracts. By maintaining a central repository for recording performance officers will be able to make sure contracts are being monitored appropriately, thereby ensuring suppliers are meeting their contractual obligations.

4.2.5. Increasing the threshold from £5,000 to £10,000 for contracts to be entered onto the contracts register, reduces the time and effort required by officers in administering this process and being able to engage the services of the supplier in an expedient manner.

4.3. Dynamic Purchasing Systems

- 4.3.1. The use of Dynamic Purchasing Systems (DPS) is integral to the delivery of the MTFS targets. Currently there is no reference to the DPS in the CSO's; DPS's are now being more frequently used since the relaxation of the Regulations relating to the use of a DPS. It is therefore appropriate the CSO's are updated to reflect these regulatory requirements and ensure compliance with the Regulations.
- 4.3.2. Introducing electronic approval of contracts is a more cost effective and efficient way of managing processes. Currently 'physical signatures' are required, which is not always practical when utilising electronic platforms to tender (i.e. Dynamic Purchasing Systems, e-auctions etc.). Regulation 34 of the Regulations states Dynamic Purchasing Systems shall be operated as completely electronic processes. Therefore the use of 'physical signatures' at all times is not appropriate. As an example; a DPS is used for temporary accommodation which helps to secure 3,000 properties; as tenants move in and out of these properties (many overnight accommodation) using an electronic signature enables the Council and the provider to agree and sign up to terms without the need to print off and physically sign an agreement. Currently, the CSO's have no provision for electronic signatures, including such changes allows for practical application of electronic signatures where appropriate.

4.4. New and Updated Regulations

- 4.4.1. Additional references to the Regulations have been made throughout the document to ensure they are aligned with the current Regulations and reflect any recent changes to the Regulations.
- 4.4.2. The introduction of the Concession Contract Regulations (CCR) 2016 was introduced in April 2016. The CSO's have been updated to take account of these changes and align them with the procurement processes. Concession contracts can be somewhat complex; however generally these contracts are defined as contracts whereby the Authority may outsource the works or services to which a provider may exploit. However; there is an assumption that the contractor assumes operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services. An example of a concession could be, where the Authority allows an organisation to lease a building at a peppercorn rent to enable the building to be refurbished and used for social use (i.e. day centre), the refurbishment and operation of the day centre may cost more than the revenue it generates; therefore the operator is taking a risk.

4.5. Inconsistencies in CSO's

- 4.5.1. The requirements for waivers to be referred to Cabinet have been revised to enable a more practical application of such referrals. The threshold has been increased from £250,000 to £500,000 for referral of waivers to cabinet. This avoids anomalies that may occur with having inconsistent thresholds (i.e. currently a director would not be able to waive a contract with a value of £300,000 (only having authority up to £250,000); however if the waiver had been approved at cabinet, a director could subsequently approve an extension of the same contract, up to a value of £500,000 without the need to refer the extension to cabinet). The amendments seek to align the threshold with that of a Key Decision and other similar thresholds stated in the CSO's.
- 4.5.2. The introduction of aggregated values has been applied across some thresholds to be consistent with the 'spirit' of what is defined as a Key Decision. The current drafting of the CSO's potentially enables a contract to be awarded with a value of £499,000 and then have multiple extensions with a value of £499,000 by a Director, without the need to go to Cabinet as a Key Decision.
- 4.5.3. Extension to Consortia exclusions has been included to ensure consistency in the current shared services agreements between the Councils of Haringey, Camden and Islington, and that of the CSO's for each Council relating to Consortia members being empowered to undertake procurements on behalf of Haringey Council.

5. Alternative Options Considered

5.1. Do Nothing

- 5.1.1. This option would not support the Council's desire to migrate to a strategic and commercially focused Procurement service, nor support some of the statutory requirements relating to the Regulations for communicating electronically.
- 5.1.2. It would increase the resource requirements in Corporate Procurement and severely place the Procurement MTFS savings under pressure.
- 5.1.3. Not applying updates to the CSO's would place the Council at risk of non compliance with some Regulations; therefore exposing the Council to financial and reputational risks.

6. Background information

6.1. Target Operating Model

- 6.1.1. Between September and December 2015 Procurement undertook a number of workshops with key stakeholders within the organisation, comprising of some Heads of Service, Assistant Directors and above. The purpose was to engage with business units to identify what operating model the business wanted in respect of the Procurement function. The clear directive from the business units was to create a Procurement operating model that focused on a strategic and commercial function,

supported with a business partner approach. With this in mind, a Procurement operating model was developed incorporating a strategic partner function, supported by a tier of procurement delivery managers. Who would be responsible for delivering procurements in excess of £160,000. Additional support for lower level procurement and transactional activities would be undertaken from within the SSC.

- 6.1.2. In February 2016 the Resource Priority Board approved the new TOM for Procurement. The new TOM transitions the Procurement department from a predominately reactive service into a strategic and commercially focused service.
- 6.1.3. The implementation of the TOM will incorporate training and education programmes to assist with the transition associated with a change in thresholds and new ways of working into the business units.
- 6.1.4. The introduction of the new Procurement TOM will assist in the delivery of £2.8m of savings over the next 3 years and form the basis of potential further savings in subsequent MTFs.
- 6.1.5. During the workshops in late 2015, all business units agreed that the current thresholds should be raised to enable the Procurement department to focus on high value, high risk procurements and the lower value procurements should be undertaken within the business units. A threshold of £160,000 was deemed to be appropriate level in defining what is considered low value. The practicality of these thresholds, aligns with some of the Procurement regulatory thresholds in place.
- 6.1.6. Procurements below £160,000 will be undertaken by the service areas within the Council and will be supported through the provision of a revised procurement tool kit and via access to support services in the SSC; however Procurement will continue to 'own' the expenditure across all categories.
- 6.1.7. The Procurement department will deliver high value, high risk procurements valued in excess of £160,000 (subject to the changes to CSOs' being approved).

6.2. Procurement Related Technology

- 6.2.1. The Procurement TOM is supported by the introduction of new technology enablers, these enablers primarily consist of the following:
 - Corporate sourcing portal with in-built quality assurance controls for all procurements;
 - Contract management system to centrally record all contracts let. There will also be performance management and contract monitoring incorporated into the solution; and
 - Enhancements to SAP to enable more efficient management of data and processes, providing an integrated environment between SAP, the sourcing and contract managements solutions.

6.3. Dynamic Purchasing Systems

- 6.3.1. The regulations relating to the use of DPS have been significantly relaxed in the current Regulations, as a result of these changes; the Council has recently invested in a corporate Dynamic Purchasing System (DPS). The DPS is a strategic sourcing tool that compliments the new procurement TOM providing an electronic platform to advertise and manage up to £100m of expenditure across multiple categories.
- 6.3.2. The DPS operates as a live framework environment, which is being used more frequently throughout Public Sector and will be a major contributor to delivering the MTFS targets.
- 6.3.3. The DPS will enable suppliers to join at any time during the life of the DPS (provided they have met the accreditation and enrolment requirements) and 'bid' for the services managed through the DPS. This creates an active and dynamic supply chain that encourages SME participation and competition.
- 6.3.4. The CSO's require updating to facilitate the use of the DPS more efficiently.

6.4. New and Updated Regulations

- 6.4.1. The introduction of new regulations or amendments to current regulations has come into force since the previous update to the CSO's. These updates need to be reflected in the CSO's to ensure the Council continues to comply with regulations and avoids any associated risks of not complying with regulations.
- 6.4.2. The Regulations require all government agencies to communicate electronically with suppliers by April 2018, enhancing the CSO's will prepare the Council in meeting this requirement.

6.5. Inconsistencies in CSO's

- 6.5.1. During the review of the current CSO's a number of minor inconsistencies were identified. This has created some confusion with officers when trying to apply the CSO's. It is therefore appropriate to address these inconsistencies and ensure they are aligned with the 'spirit' or intention of the CSO's.

7. Contribution to strategic outcomes

- 7.1. The recommendations in this report are a key enabler to migrate the Procurement services into a strategic and commercially focused service, which will deliver increased value for money and savings across the services. The benefits include:
 - Enables Procurement to deliver the MTFS targets.
 - Improve how we use technology to enable more efficient and effective services.
 - Improve governance and controls on how the Council spends its money.

- Enables increased monitoring of performance across the supply chain to ensure residents obtain value for money.
- Support the Council's desire to enable increased self-service and channel shift users into new ways of working.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1. Finance

8.1.1. The Chief Finance Officer has read and noted the recommendations in this report and has no issues to raise. Approval of these recommendations will support the delivery of savings included in the Council's current MTFS and ensure that professional procurement staff are focussed on the high value, high risk procurement activity which should promote best value for the authority.

8.2. Procurement

8.2.1. The Head of Procurement has prepared this report in consultation with senior officers within the Council and legal services.

8.2.2. It is the Head of Procurements view; the recommendations made in this report fully support the future strategic direction of the Procurement Services.

8.3. Legal

8.3.1. The Assistant Director of Corporate Governance notes the contents of the report and sees no legal reasons preventing Members from approving the recommendations in the report.

8.4. Equality

N/A

9. Use of Appendices

Appendix 1 – Proposed changes to Contract Standing Orders

10. Local Government (Access to Information) Act 1985

N/A